

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Financial Standards and Examinations
(As Amended at ARRS, November 9, 2021)

806 KAR 11:020. Multiple employer welfare arrangements.

RELATES TO: KRS ~~304.1-050~~, 304.1-120, ~~[304.1-050]~~, 304, 304.2-160, 304.2-165 304.5-040, 304.9-020, 304.9-051, 304.11-030, 304.11-045, 304.17A-005(22), 304.17A-410(7), 304.17A-600, 304.17A-633, 304.17A-802, 304.17A-812, 304.99-020, ~~[304.17A-005(22)]~~, ~~304.17A-410(7)~~, ~~304.17A-600~~, ~~304.17A-633~~, ~~304.17A-802~~, ~~304.17A-812~~, ~~304.99-020~~,]29 U.S.C. §1002(40).

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes ~~[provides]~~ ~~[that]~~ the Commissioner ~~[Executive Director]~~ of Insurance to[may] make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to established[prescribe] the fees charged by the department and the services for which fees shall be charged by administrative regulation. This administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner ~~[Executive Director]~~ of Insurance so the Commissioner ~~[Executive Director]~~ of Insurance can enforce applicable laws. This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~

- (1) "Administrator" is[has the meaning as] defined by KRS 304.9-051(1).
- (2) "Agent" is[has the meaning as] defined by KRS 304.9-020(1).
- (3) "Commissioner" ~~["Executive director" means the Executive Director of the Kentucky Office of Insurance]~~ is defined by KRS 304.1-050(1).
- (4) "Department" is defined by KRS 304.1-050(2).
- (5) ~~["Doing business"] [has the meaning] [is defined by] [set forth in] [KRS 304.11-030(2)].~~
- ~~(6)~~ "Health benefit plan" is defined by KRS 304.17A-005(22).
- ~~(6) [(7)]~~ "Health insurance policy" means[has the meaning of] "health benefit plan" as defined by KRS 304.5-040.
- ~~(7) [(8)]~~ "Health insurance stop-loss policy" is[as] defined by KRS 304.17A-410(7).
- ~~(8) [(9)] [(3)] [(a)]~~ "MEWA" [means a] or "multiple employer welfare arrangement":
[a], which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries] Is defined by 29 U.S.C. [§]1002(40); and
[(b) [A] ["MEWA"] Does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.
- ~~(9) [(10)]~~ "Person" is defined by KRS 304.1-020.
- ~~(10) [(11)]~~ "Private review agent" is defined by KRS 304.17A-600(11).

Section 2. (1) [Information to be Provided to the Commissioner Executive Director. (1) Prior to doing business in Kentucky,] A MEWA seeking initial registration shall file with the commissioner an Application for a Certificate of Registration of a Multiple Employer Wel-

fare Arrangement (MEWA) and obtain registration approval from the commissioner pursuant to Section 4 of this administrative regulation.

(2) A MEWA shall submit an application fee of \$500 ~~with[at]~~ the ~~[time of]~~ application.

(3) The application shall include the information required in Section 3 of this administrative regulation.~~[A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this administrative regulation, file with the executive director in writing the information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]~~

~~(2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the executive director the written information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]~~

Section 3. Written Information to be Filed with the Commissioner ~~[Executive Director]~~. The information required to be filed in writing with the commissioner ~~[executive director]~~ in support of an application for a certificate of registration pursuant to Section 2 of this administrative regulation shall ~~include[be]~~is][as follows]:

(1) The employer identification number assigned by the Internal Revenue Service to the MEWA;

(2) A copy of any trust document used by the MEWA;

(3) A copy ~~[Copies]~~ of any health benefits or life benefits plan documents;

(4) A copy ~~[Copies]~~ of the most recent ~~[all annual]~~ Form 5500 and M-1 filing ~~[reports]~~ made by the MEWA to the United States Department of Labor ~~[(Form 5500)]~~;

(5) A copy ~~[Copies]~~ of any audits conducted with respect to the MEWA;

(6) A copy of any ~~[Copies of]~~ actuarial reports prepared for the MEWA;

(7) A copy ~~[Copies]~~ of any summary annual reports published for participants in the MEWA;

(8) A copy ~~[Copies]~~ of any contracts with agents or administrators;

(9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;

(10) A copy ~~[Copies]~~ of any stop-loss, excess, or reinsurance policies held by the MEWA;

(11) The AM Best rating of the stop-loss insurer issuing a policy to the MEWA;

(12) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;

(13)~~[(12)]~~ A list of the names, addresses, official positions, and biographical information of all officers and trustees of the MEWA;

(14)~~[(13)]~~ A copy ~~[Copies]~~ of any marketing materials and rate manuals; and

(15)~~[(14)]~~ The total number of employees, dependents, and beneficiaries participating in the MEWA.

Section 4. Issuance of Certificate of Registration.

(1) Upon receipt of an application for a certificate of registration submitted in accordance with Section 2 of this administrative regulation and the written information submitted in accordance with Section 3 of this administrative regulation, the commissioner shall issue or deny the application. A certificate of registration shall be issued only if the commissioner finds the following conditions are met:

(a) The persons responsible for the conduct of the affairs of the MEWA ~~shall be[are]~~ competent, trustworthy, and possess good reputations; and

(b) The MEWA ~~shall be~~is financially responsible and ~~may~~ reasonably ~~be~~ expected to meet its obligations to participants and prospective participants. In making this determination the commissioner ~~shall~~may consider:

1. The adequacy of working capital;
2. Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the coverage offered through the MEWA; and
3. Compliance with KRS 304.17A-812~~[,]~~ as a guarantee that the financial solvency obligations of the MEWA ~~shall~~will be met.

~~(2) A MEWA subject to the jurisdiction of the department shall comply with any applicable requirements of KRS Chapter 304, including KRS 304.17A-600 through 304.17A-633.~~ A MEWA that is issued a certificate of registration shall comply with the requirements as ~~established in~~defined by KRS 304.17A-600 through 304.17A-633. A MEWA may contract with a registered private review agent that is licensed in Kentucky to fulfill these requirements.

~~(3) A MEWA that is issued a certificate of registration shall be subject to the commissioner's authority to investigate complaints pursuant to KRS 304.2-160 and~~ [KRS] 304.2-165.

Section 5. Renewal of Certificate of Registration.

- (1) A MEWA shall annually renew a certificate of registration by submitting:
 - (a) The application required by Section 2 of this administrative regulation;
 - (b) The information required by Section 3 of this administrative regulation.
- (2) The information required by subsection (1) of this section shall be submitted to the department no later than March 1 of each year.

Section 6. ~~Responsibility to Exercise Due Diligence.~~

~~(1) Requirements of an Agent. Prior to engaging in, or assisting any person to engage in, offering health care benefits to an employer or person located in this state, an insurance agent shall perform appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the policy is:~~

- ~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~
- ~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~
- ~~3. An entity otherwise licensed to offer health insurance in this state; or~~
- ~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~(2) Requirements of an Administrator. Prior to entering into any administrative contract to assist any person with administration of health care benefits covering employees of an employer or a person located in this state, an administrator shall carry out appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the health care benefits is:~~

- ~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~
- ~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~
- ~~3. An entity otherwise licensed to offer health insurance in this state; or~~
- ~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~(3) Requirements of an Insurer. Prior to issuing a stop-loss policy for a health insurance policy covering employees, employee dependents, or individuals located in this state, an insurer shall carry out appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the health care benefits is:~~

~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~

~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~

~~3. An entity otherwise licensed to offer health insurance in this state; or~~

~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~Section 7. Reporting Requirement.~~

~~(1) An insurance agent, administrator, or insurer shall file a written complaint with the department pursuant to KRS 304.2-160 and KRS 304.2-165 if, as a result of the due diligence requirement in Section 6 of this administrative regulation, the insurance agent, administrator, or insurer knows or has reason to know that:~~

~~(a) A health insurance policy is, or is about to be, offered to the public in this state by an entity that is not permitted to offer health insurance in this state;~~

~~(b) The coverage is not as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage; or~~

~~(c) The health insurance policy has not been filed with, and approved by, the department and is not otherwise exempt from filing requirements.~~

~~(2) The written complaint required by subsection 1 of this section shall be filed within fourteen (14) days of discovering activity prohibited by this regulation, determination of improper registration, or otherwise unauthorized business.~~

~~Section 8.] Penalties and Liability. [(1)] A person who violates Section 2 of this administrative regulation shall incur[is subject to] a civil penalty of [one thousand dollars (\$1,000)] for each violation.~~

~~(2) An insurance agent, administrator, or insurer that fails to file a written complaint in accordance with Section 7 of this administrative regulation shall be subject to administrative penalties, up to and including revocation, suspension, or civil penalty for each violation pursuant to KRS 304.99-020.]~~

~~Section 7. [Section 9.] Exemptions. The provisions of this administrative regulation shall not apply to a self-insured employer organized association group as defined by[in] KRS 304.17A-802(10). [Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

~~Section 8. [Section 10.] Incorporated by Reference. (1) The following material[information] is incorporated by reference:~~

~~(a) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021;~~

~~(b) United States Department of Labor Form 5500, 2020;~~

~~(c) United States Department of Labor Form M-1, 2020; and~~

~~(d) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Mon-~~

day through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at <http://insurance.ky.gov/>.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.